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Judiciary Committee
February 06, 2009

[LB332 LB333 LB344 LB669]

The Committee on Judiciary met at 1:30 p.m. on Friday, February 6, 2009, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB669, LB332, LB333, and LB344. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Scott Lautenbaugh; Amanda McGill; and Kent Rogert. Senators absent: Mark Christensen. []

SENATOR ASHFORD: Welcome to everyone, especially the leadership group from the Bar Association. Welcome to the Ernie Chambers Judiciary Hearing Room. My name is Brad Ashford. My colleagues are here: Senator Coash from Lincoln; Senator Lautenbaugh from Omaha, you may know from the bar; Steve Lathrop; Amanda McGill from Lincoln; and, of course, Brenda Council from Omaha; and Stacey Trout is the legal counsel; and Christina Case is the committee clerk. So welcome to all of you. We have four bills today: two real good ones that will be introduced by me--LB332 and LB333. But before that, we have a bill to be introduced by Senator Coash regarding judges and numbers of judges, which is always a good issue. So Senator Coash, why don't you come on up here and...good afternoon. []

SENATOR COASH: (Exhibit 1) Good afternoon. Thank you, Chairman Ashford and members of the committee. For the record, my name is Colby Coash, C-o-a-s-h, and I represent the 27th District here in Lincoln. I'm here today to introduce LB669. LB669 will amend current statutes to create five new judgeships: one county and one district judgeship in the second judicial district, which is Sarpy, Cass, and Otoe Counties; one county and one district judgeship in the third judicial district, which is in Lancaster County; and one additional judgeship for the juvenile court of Douglas County. These additions reflect the findings of the Judicial Resources Commission, chaired by Supreme Court Justice Michael McCormick. The commission is made up of four judges appointed by the Nebraska Supreme Court; one practicing lawyer from each of the six judicial districts in Nebraska; one citizen from each of the six judicial districts in Nebraska; and one additional citizen appointed at large. The commission analyzed the following: judicial workload statistics; whether litigants in the judicial districts have adequate access to the courts; the population of the judicial districts; and other duties and travel time involved with the judicial districts. Some findings of note are as follows. The current case filings per judge in Lancaster County is around 822 cases, which is a 20 percent increase in new case filings per judge since 1995, the last time the district court judgeship was created in the third judicial district. Since the summer of 2008, a little less than one-half of a judge's caseload has been assigned to a pool of visiting judges. There has been an increase of almost 9 percent in criminal filings in the past year, and an increase in civil cases of almost 10 percent in the district court of Lancaster County. Following my testimony today will be some judges from these districts to talk a little bit more in detail about their experience with resources, and also the Bar Association will follow as well. With that, I'll close my opening and see if

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anybody has any questions. [LB669]

SENATOR ASHFORD: Thank you. Any questions of Senator Coash? Seeing none, thanks. You'll be around to close? [LB669]

SENATOR COASH: I'm not going anywhere. [LB669]

SENATOR ASHFORD: We have proponent, opponent, and neutral testifiers, but we're going to have Judge Merritt first. [LB669]

PAUL MERRITT: (Exhibit 2) I signed that piece of paper, but I lost it, but I'll get it back up to you. [LB669]

SENATOR ASHFORD: Well, we've identified you as Judge Merritt, and you're aware of the light system, and we eject you on the red. [LB669]

PAUL MERRITT: You know, we talked about this before. I am color blind so it doesn't...I could care less what the lights say. (Laughter) [LB669]

SENATOR LATHROP: Nice try. (Laugh) [LB669]

PAUL MERRITT: But I have hopefully tailored this just for three minutes, so if I talk fast I should get done in three minutes. Initially, as mentioned by Senator Ashford, my name is Paul Merritt, M-e-r-r-i-t-t, Junior. Senator Ashford and members of the Judiciary Committee, I'm one of the seven district judges for the third judicial district of the Nebraska District Courts, which is commonly referred to as the Lancaster County District Court, since our district consists only of Lancaster County. I appear today on behalf of the Lancaster County district judges in support of LB669, particularly that portion of the bill that creates an eighth judgeship for the Lancaster County District Court. I'm not going to go over the portion of my presentation dealing with the Judicial Resources Commission, since Senator Coash basically told you what they do. I will just say that the Judicial Resources Commission, for at least the last couple of years, has recommended the creation of an eighth district judge for Lancaster County. As noted by Chief Justice Heavican in his January 22 State of the Judiciary message to the Legislature, solving the disparity of rising caseloads per judge in judicial districts across the state requires, in the Chief Justice's words, "more judges, redistricting, or both." However, as recognized by the Chief, "only the Legislature can create new judgeships or change district boundaries." In 1996--and my figures would be just a little bit different than Senator Coash's because I have the brand-new ones through the close of 2008--in 1996, the Legislature created a seventh judgeship in Lancaster County. Prior to the creation of the new judgeship, we had 813 new case filings per judge. In 1998, the first full year that we had a full complement of seven judges for a full year after the seventh judgeship, we had 707 new case filings per year. The just-compiled figures for 2008

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show that we now have 835 new case filings per judge in 2008, or an increase of just about 20 percent since 1996. Interestingly, during the period from 1998 to 2008, notwithstanding our 20 percent increase in new case filings per judge, our disposition of all pending cases has increased over 50 percent, so maybe we've become more efficient. New case filings, while an important factor, is only one of the number of factors that we believe should be considered in determining whether to create a new judgeship. While time does not allow me to mention the various factors, I want to point out one additional factor that we believe is significant. The Lancaster County District Court is a unique statewide court. Because we're located at the seat of state government, the Legislature has seen fit to designate us as the court having exclusive jurisdiction over a myriad of appeals or original actions. Our cursory view of state statutes reveals at least 90 statutes in which Lancaster County is designated as an option for appeals from agency matters or the initiation of original actions. The vast majority of these statutes mandate that an action is to be brought in Lancaster County and not in another county. For example, if the director of the Department of Insurance...that says stop. [LB669]

SENATOR ASHFORD: Go ahead. Go ahead. I wouldn't dare...(laugh). [LB669]

PAUL MERRITT: Yeah, we could; you could. For example, if the director of the Department of Insurance believes that an insurer needs to be liquidated, the request for liquidation is required to be filed in Lancaster County. The photos I've handed to you--and that's at the back of the materials that I've presented to you--represents a small amount of the evidence that has been reviewed by one of our judges in a liquidation case that's been ongoing since 2001, and is only now beginning to see the light of day. I'm not going to go on to the other example. I'll just say we do election cases, almost all of them. In almost every election, anymore, there are cases, and they basically require us to put everything else aside and get those taken care of. We urge you to recommend the creation of an eighth judicial judgeship for the Lancaster County District Court. I'll be glad to try to answer any questions which you may have. [LB669]

SENATOR ASHFORD: Thank you, Judge. And we appreciate your testimony. I'm just kidding you a little bit. I mean, you always are very well-prepared. Senator Lathrop. [LB669]

SENATOR LATHROP: Just briefly. Judge, you've looked at the numbers. If we get one judge out of the request for the total number of judges in this bill, is it your judgment that the most acute need is in Lancaster County District Court? Or is that subject to some disagreement? [LB669]

PAUL MERRITT: There's a lot of disagreement on that. More than just some, Senator. You know, and I really don't want to...I hate to get in a position where I say we need one more than the people downstairs in our building or more than the juvenile court in Douglas County, because I don't practice downstairs and I don't practice in juvenile

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court in Douglas County. I just know what our situation is, and I don't believe I'm in a position to say we need it more than the other places do. I just don't believe it. [LB669]

SENATOR LATHROP: I'll put someone else on the spot then. [LB669]

PAUL MERRITT: I just won't go there, I guess, Senator. Sorry. [LB669]

SENATOR LATHROP: Okay. That's fine. [LB669]

SENATOR ASHFORD: I thought I had a--and I'm sure you'll agree--I had a great idea last year to... [LB669]

PAUL MERRITT: If you say it, I agree. I agree, Senator. [LB669]

SENATOR ASHFORD: (Laugh) But the idea of having appeals go to the district court of the district where the appeal emanates from--and I know that doesn't cover a lot of cases, but some--is that just something that doesn't work very well, or how...? [LB669]

PAUL MERRITT: As I recall, last year the Attorney General's Office testified in a neutral position on that, and testified that it would increase...doing that would increase their financial obligation by about \$255,000 a year. [LB669]

SENATOR ASHFORD: Well, they would be traveling and that's the issue. [LB669]

PAUL MERRITT: And that's what they were saying. And we can get a new judge for less than \$255,000 a year. So if that was an...and that was only the AG's Office. There are other departments that don't use the AG for the agency appeals, and I suspect that they would have the same argument that would cause a financial burden to them. [LB669]

SENATOR ASHFORD: And how is the...are you...you're getting some...maybe I'm presumptuous here, but you're getting some relief from York. [LB669]

PAUL MERRITT: From the visiting judges program? [LB669]

SENATOR ASHFORD: Yes. [LB669]

PAUL MERRITT: Yes, sir. We have...right now, there were six but now there's three judges, and they take on...what they've been...they've come on board since probably August, and they have a little less than the equivalent of one-half of one judge's caseload. One of them was in Lancaster County last week for four days, trying a jury case. And although I'm not sure you can say, oh, I can really tell the difference--one-half of one judge--they're doing those cases, and so they are giving us some relief. Yes, sir.

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[LB669]

SENATOR ASHFORD: And I don't suppose you have enough time to have concurrent jurisdiction over probate matters, do you? [LB669]

PAUL MERRITT: Uh, no, I don't think that...I'm positive I don't and I'm pretty sure that I can speak for the other district judges in Lancaster County, and say the same thing. [LB669]

SENATOR ASHFORD: That was a bit of a softball, but thanks very much, Judge Merritt. Any other questions? Thank you. [LB669]

PAUL MERRITT: Thanks, Senator. [LB669]

SENATOR ASHFORD: Proponents? [LB669]

SUSAN STRONG: (Exhibit 3) If no one else is coming up, I will. I have some materials I'd like to hand out. [LB669]

SENATOR ASHFORD: Welcome back. [LB669]

SUSAN STRONG: Yes. Thank you. I'm Susan Strong and I'm here on behalf of the Lancaster County Court. And like Judge Merritt, you know, I don't practice upstairs and I don't practice in the juvenile courts, and didn't as an attorney in the juvenile court so I don't know what the need is there, but I can tell you that we have a need that is about as acute as it can get. For almost two and a half decades, we've operated with a six-person county court in Lancaster County. In 1985, at the inception of the court, we had 44,000 cases, and Lincoln had a population of about 200,000 people. In 2008, we had over 73,000 cases filed, and our population in Lincoln has grown to about 275,000. Although we've had a 60 percent increase in caseload and a population increase of 75,000 people, we've had no increase in judgeships over that time period. During that same time period, we've seen our district court increase by two judges, and our juvenile court increase by three judges, while we still remain a six-person county court. Today, each of our six judges is responsible for over 12,000 cases. If we get another judge, we will still have over 10,400 cases per judge, which would still be more than the current caseload of any of the other county courts. Let me tell you what those numbers mean. It means that we have to dismiss criminal cases now because we simply cannot get them tried within the time period allotted by the Speedy Trial Act; that will include a substantial number of DUI cases. We have over 200 DUI jury trial cases on the list right now, and I don't know how we're going to get those tried in the next six months. It's now the norm to have well over 100 criminal defendants in a 90-minute criminal arraignment session, and 20 criminal trials set for one 90-minute session as well. I understand that the rural communities need access to justice, but with that amount of time constraint

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due to the heavy volume, we just don't feel that the people in Lancaster County are getting access to the justice they deserve. The figures show that just in 2008 we had a 16 percent increase in our case filings. So unlike some of the other districts and counties, our numbers are not declining or even leveling out, but they are continuing to increase at a rapid rate. And I believe that we're reaching a point in Lancaster County that if the situation continues to be ignored it will have disastrous consequences. So we urge your support of LB669 and particularly that section that approves a new judge for Lancaster County Court. [LB669]

SENATOR ASHFORD: Any questions of Judge Strong? You've clearly made your case, Judge, and, you know, if we could write the checks, we'd, I think, do it today. But I know this...you've been here before and you've worked hard on your presentation again and it's clearly justified, but. Thank you. [LB669]

SUSAN STRONG: Thank you. [LB669]

SENATOR ASHFORD: Additional proponents. [LB669]

RANDALL REHMEIER: (Exhibit 4) Chairman Ashford and members of the committee, my name is Randall Rehmeier and I am a district court judge in the second judicial district, which is comprised of Sarpy, Cass, and Otoe Counties. And with regard to our situation, it's a lot like the other judges who have testified. I've handed out and you're receiving now the exhibit that I had. One of the problems I've had through life was doing things backward: I was 9 pounds 13 ounces, breach birth. And so the first thing I want you to look at is the last page instead of the first page. But it basically breaks down what the different districts are within the state with regard to district courts; what counties are within those districts. I know that's elementary but I think what we're largely talking about is demographics. We're talking about shifts in population. And in our particular case, with Sarpy County, is the fastest growing county in the state; Cass County is the fifth largest; Otoe County is also growing. And on the front page, Exhibit A sets forth the increase in populations between 2000 and 2006. I apologize for the writing on it. Actually this was compiled by Judge Thompson back in 2007, and I used...I didn't have enough time to update it but it shows the trend of population. And it's, I guess, again getting a little bit elementary. It's about like anything else. If we compare Falls City, for example, to Grand Island, we know that there's more population in Grand Island and we know that there's going to be more real estate agents, we know that there's going to be more retail stores, gas stations, and everything, and the same way with the services that are needed to be provided. You'll see, on the first page, we service--the four judges in the second judicial district--service roughly 47,000 people. The average judge is going to service about 31,000 to 32,000 people. And so I think this is a good barometer of looking at. Now we can look at the weighted caseloads and we can look at the other things, but again populationwise and so forth, it dictates that we would be considered for another judgeship. The second page, Exhibit B, sets forth kind of a rendition of the

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different districts and what the per-judge caseload is. Again, you'll see that we are the top district as far as the number of cases that we handle. On a personal level in Otoe and Cass County, which are the two counties I handle, my average, the last five years, has been 928 cases. The average judge is 750 cases. My highest was 984 cases. I travel about 750-1,000 miles a month, going back and forth, and I don't have a law clerk or anything, so we have an acute situation. Sarpy County cannot help out much because they have 800 cases per judge there and so they're not able to provide much assistance. Judge Merritt did a good job. He pointed out the same thing that I was going to point out about Chief Heavican and when he gave the address to the Unicameral with regard to the status of the judiciary. And again, as he pointed out, as Judge Merritt did, the Legislature is the only one that can change judicial boundaries or create more judgeships. We are in need of another judge. We want to be in line with everybody else. Sarpy County is in the process of a remodel, and they're going to have two new courtrooms up there. We know, as we project the population growth, that our caseload are going to continue to increase here through the next few years. And with that, I am testifying here as a proponent of the bill. We would like to be considered for an additional judgeship in the second judicial district. Any questions? [LB669]

SENATOR ASHFORD: Thank you, Judge. Any questions? Seeing none, thank you. Thanks for your comments. [LB669]

RANDALL REHMEIER: Okay. Thank you very much. [LB669]

SENATOR ASHFORD: And Senator Rogert is here from Tekamah, south of Lincoln. (Laugh) You had to be here every day to get the joke, but...Judge. [LB669]

TODD HUTTON: Thank you. Chairman and members of the committee, my name is Todd Hutton. I'm a county court judge for the second judicial district, and I am here to testify for you today as a proponent of this bill. I believe that the statistics that have been provided to you certainly are no secret, and the numbers, I'm not going to go over those again because by the end of the day you will have heard them 25 times. I guess what I would like to address to you is a challenge that was given to the county court judges by our previous or former Chief Justice Hendry, as well as the Chief Justice Heavican, and that is: What can you do as self-help measures; what type of creative actions can you take absent bringing on more personnel, whether it's in our clerks' offices or as members of the judiciary? And I can tell you what we have done in Sarpy County and throughout the district, is we have been very proactive in bringing technology into our courtrooms. Our judges do our data entry while we're hearing cases so that we are not sending people to our clerks' offices to expedite cases with regard to receiving their paperwork and such. You actually...we put it in the computer while you're waiting at the bench, which is a rather new concept for many judges, to not only listen to the case but also do data entry at the same time. But what it does is it speeds up the process. Because our numbers are so great, we're trying to get people through as quickly as we

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can. What we've also done is, within our clerks' offices we're cross-training folks so that we don't have to increase our number of staff, but again trying to self-help. In addition, with regard to our caseload assignments in Sarpy and Cass and Otoe, what we have done is we have blended our cases such that every day we've got judges available to cover anybody, any other case that might be necessary to be heard, so that we don't have courtrooms that aren't being used or litigation that is being delayed. So what we're trying to do is exhaust, internally, every avenue that we have, but at the same time recognize that, as the numbers do speak, we are in a position here where we would qualify for 4.7 judges and we have 4, but we want to be considered so that we don't end up in a position like, as Senator Ashford said, say Lancaster County has where we don't want to be dismissing cases simply because we don't have the personnel to be able to handle them. So any questions that you might have? [LB669]

SENATOR ASHFORD: Thank you, Judge. Senator Lathrop. [LB669]

SENATOR LATHROP: Yeah, I do have a question for you, Judge. There have been, over the last several years, some blending of things that can be handled by the county court versus the district court; you have concurrent jurisdiction with some certain things. How many things or how much is the Sarpy County county court doing that was traditionally or in the past a district court function? [LB669]

TODD HUTTON: I would...basically what you're talking about is domestic cases... [LB669]

SENATOR LATHROP: Domestic cases. And I think we permit for Class IV felonies, too, don't we? [LB669]

TODD HUTTON: Yeah. We haven't. We have met...our presiding judge has met...our presiding judges, both at the county and district, have met. Here's our problem: One of the problems with county court is the calendaring of cases in county court is every day you have every hour accounted for. We don't have, because of scheduling problems, we don't have, I guess you'd call, the luxury of being able to say, okay, we can set aside four days for a trial, because on Wednesday we've got 300 arraignments that have to be handled. So the logistics of it, even though it may look good on paper to blend some of that stuff, the actual application of that in the real world becomes difficult. So we have...we've taken...we are doing protection orders and we've taken some...you know, with regard to the domestic cases, you can elect that or the litigants elect that up-front, so we do have it. But it...the reality of it is, it's very difficult because our hours are accounted for. [LB669]

SENATOR LATHROP: And we had that discussion in here a couple of days ago, and I appreciate that. The protection orders, how many do you have and what percent does the county court take in Sarpy versus the district court? And I'm not asking you to get it

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down to the percent, but just ballpark it. [LB669]

TODD HUTTON: You know, I hate to give you a particular number without...and I don't see I've got it here. I don't have a particular number for you. I know what we've been trying to do, is...again, that's a situation where the folks are electing when they're coming in, and then it's being divided up amongst the six judges instead of the three judges, so I can't give you a specific number but it's... [LB669]

SENATOR LATHROP: When we look at the case numbers that are in these statistics, do they include the protection orders? [LB669]

TODD HUTTON: No. [LB669]

SENATOR LATHROP: So in addition to these numbers, there's protection orders that have to be dealt with. And that's an ex parte... [LB669]

TODD HUTTON: Well...and part of the problem that you have is that now, with the change in the legislation, we're going to be having required hearings on protection orders; where, before, a protection order may have been issued ex parte but then there had to be a request for an actual evidentiary hearing. Now, because of the change in the law, we are going to be required to, again, designate a certain block of time for hearing these cases. [LB669]

SENATOR LATHROP: Okay. That's all I have. Thanks. [LB669]

SENATOR ASHFORD: And that's the federal, the change we put into place last year because of the federal funds. [LB669]

TODD HUTTON: Correct. [LB669]

SENATOR ASHFORD: How do you handle these probate trials that go on for a period of time: conservatorship trials, things that take a long time? [LB669]

TODD HUTTON: Well, it's difficult. What we do is we block out as much time as we can. And unfortunately we bifurcate a lot of trials, where we'll start it; we'll go for a couple hours; and then they'll come back in three weeks, and then they'll come back in another two weeks. And it is...it's a strain on everyone because of that. [LB669]

SENATOR ASHFORD: And on families. I mean, I think this is a big issue. I know we had some discussion yesterday about it, and many of the people on this committee have had experience in dealing in those kinds of issues. And I...there's no specific bill directly on it this year, but I think we need to do something about it. I am convinced that there is a problem with having to bifurcate, trifurcate, if you will, these cases, when there

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are, through no fault of the judge--clearly not a fault of the judge in any way--where they simply cannot accommodate these cases. And I don't know how to resolve it, but I think it's a major issue and I think we need to resolve it this year, and I don't know how to do it right now, but. [LB669]

TODD HUTTON: Well, one thing, as anecdotally, what we have seen is an increase in litigation associated with guardianships... [LB669]

SENATOR ASHFORD: Right. [LB669]

TODD HUTTON: ...where guardianships are turning in...it's like going through a divorce trial. [LB669]

SENATOR ASHFORD: Right. [LB669]

TODD HUTTON: And we have multiple witnesses. We have a great deal of in-depth discussions... [LB669]

SENATOR ASHFORD: And angst. [LB669]

TODD HUTTON: ...yes, and angst, that go on. And people want finality and we're not able to give them finality in a timely manner. [LB669]

SENATOR ASHFORD: And I guess what I would do in this hearing today...I mean, we have time this session, is to challenge, not the judges necessarily, but the bar and those that are looking at it, with the judges, maybe to come up with something that we can do this year to get out there with our courts bill that will address this issue, because I think it's definitely an issue that needs to be addressed, so. [LB669]

TODD HUTTON: Well, and in the county court what you have, obviously the huge volume in county court are the criminal cases, and that's what drives the train. So that's what takes up the huge bulk of our time are the criminal cases. [LB669]

SENATOR ASHFORD: Right. And if you had a felony IV with a jury trial that took four or five, three or four or fives days long, probate trials, plus all the other, and half the protection orders, it's starting to get to be real money, as Everett Dirksen or whoever said that, whatever it was. Maybe it wasn't Everett Dirksen, but. [LB669]

TODD HUTTON: That's why what we've tried to do is to be as creative as we can internally so that we don't have to come to you and come to the taxpayers and say we need help. We want to demonstrate what we've done. [LB669]

SENATOR ASHFORD: Well, we definitely need to have some new judges in these

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areas, there's no question. I mean I think your case has been made. How to do that with the current budget and whether we have to put it off a year or two years or whatever it is, but anyway I guess if there is a way to address this probate, felony IV, protection order thing, statutorily or whether you can do it within your system, is fine. But I think if there's something we can do that makes sense for this committee to address, I think we should try to. So anyway, thanks. Any other questions of the judge? Thank you. [LB669]

TODD HUTTON: Thank you very much. [LB669]

SENATOR ASHFORD: Judge. [LB669]

VERNON DANIELS: (Exhibit 5) Good afternoon. My name is Vernon Daniels. I am one of five of the separate juvenile court judges in Douglas County. I am also appearing on behalf of our bench in support of LB669. I am providing to you a letter from our bench so as to spare you of prolonged conversation by me, here. Simply put, our need is urgent. At the last page of what is being handed out to you will show what our statistics have been from 2001 until 2008. In 2001, the total number of cases opinioned in the court was 2,519. As of December 31, 2008, it was 2,860. Now that equates out to approximately 573 cases per judge. The juvenile court judges' cases are somewhat different than most other cases, in that the cases hang around. In theory, the court can have jurisdiction over the family, depending on the type of case, whether it's abuse, neglect, a delinquency, or a status matter, until the minor child turns 19 years of age. And we're charged with various rehabilitation services to implement rehabilitation, and sometimes it's not a fast process. One of the biggest problems that we do have is that if there is a contested matter, multiple days or a full day, it is very likely that we are looking three, four months down the road before we can get a hearing date. Anecdotally speaking, I am in the middle of a seven-day termination of parental rights hearing. Today was day seven. We started that case back in, I believe, July or August of this year. And starting in August, I had to look for additional days, and it was not until February that I could find five consecutive days that we could have them, have the hearing, and that's where we're at, and we're not scheduled to finish until the middle of February. We are under deadlines to hold hearings, hold permanency hearings immediately for families, for children, those on our dockets for abuse and neglect; and, quite frankly, it's very difficult. Our judges hold hearings every 15 minutes. Now, when you consider what we are charged with: rehabilitation and monitoring rehabilitation plans and reading various exhibits that come in--and I don't think it's too much of an exaggeration to say that we are reading close to 500 pages a day of just exhibits; when you consider that, 15 minutes is not enough time to fully devote to families. If there's an urgent matter or something has to be set aside in the scope of a hearing that requires an evidentiary hearing, well, we could be looking at, once again, several months before we can find a time. And that's simply not good for, particularly when many of the matters are family, concerns to family dynamics, family relationships, that's not an acceptable alternative. And the court is concerned that we're losing credibility with litigants and with

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the bar for the reason that we can't get matters resolved in a more timely fashion. My time has expired but I will tell you that we have sought self-help measures to resolve this. One of the things we have implemented is that we set what we call check hearings to try to bring folks in to see where things are and try to see if matters can get resolved. It's a combination of check pretrial, multiple times. Most of our hearings, we have to hear them...we have to review them every six months, but the nature of some of the things that we have to deal with, if we wait six months we would have a mess on our hands at that six-month period, so we're holding hearings more frequently than what the law actually requires us to hear. We have had the assistance of county court judges from various counties, and also we've had the assistance of our fellow juvenile court judges from the other two juvenile courts; and for a period of time, we were also sharing one, the most recent judgeship here in Lancaster, the separate juvenile court. But we also recognize that these are judges, also with their own caseloads and their responsibilities, and they have an obligation first and foremost to their dockets and to their home counties and to citizens thereof. The balance of my remarks and other matters that I might cover are included in the letter that each of you have. And if there are any questions, I'd be more than willing to respond to them, and I would also like to thank you, Senator, for introducing the legislation. [LB669]

SENATOR ASHFORD: Thank you, Judge Daniels. Any questions? Senator Council. [LB669]

SENATOR COUNCIL: Yes. Good afternoon, Judge Daniels, and thank you so much for appearing before the committee today, because my question with regards to the juvenile court is its relationship to our Department of Health and Human Services and the requirements that they have to meet relative to the federal government. We had a briefing this week by Health and Human Services regarding the reporting system and what the federal guidelines and benchmarks are for certain programs and services. And one of them was permanency. And according to the federal standards, permanency should be determined in less than 12 months from the time that the child enters the system. Based upon your caseloads and the caseloads of other judges in juvenile court, how often would you predict that because of the scheduling concerns and the volume of cases, that you're unable to meet that 12-month target? [LB669]

VERNON DANIELS: I think...and that applies to us, as well, that we have to meet them, and there's also funding tied into meeting those guidelines. I can say that I believe that we try very much and we probably hit the mark very well. We try to do very well. And the reason that we do that is if we waited until that time period that we would have to, we probably would miss the mark. When I said that we hold hearings more frequently than what the law requires us to do, we do so. And I believe that we hold...we make those findings, those reasonable efforts findings, and others at that time, as well, so as to cover ourselves, because it can slip away very quickly. [LB669]

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SENATOR COUNCIL: Well, the reason I asked the question, because in response to a question that I asked of Health and Human Services during the briefing as to why we are short of the percentage goals set by the federal government on permanency. And one of the reasons for our state not hitting that mark is the progress of cases through the juvenile courts, and that the progress of the cases through the juvenile courts is one of the primary reasons why the state is short of hitting the federal target for permanency. And so I just wanted to get your input on that. [LB669]

VERNON DANIELS: I have practiced in every court in this state, just every level of court, including our federal courts, and the juvenile arena is the most stop-and-go process that I have ever been involved in. And one of the reasons for that is no one person has ownership in getting anything done. If one...if evaluations aren't done by the department, that stops us cold there. If there's an objection to it, that stops us, needless to say. So it's...it's...we are a happily dysfunctional family sometimes. [LB669]

SENATOR COUNCIL: (Laugh) Because one of the issues that I'm familiar with in having practiced in juvenile court and before you, Judge Daniels, is when you're talking about the coordination and so many people involved, the situation is we have a youngster who may come into the system via a dependency docket, and during the course of you addressing the dependency docket, they have a status offense, and then the issue is who was responsible from the department level, and then the status case ends up backing up the permanency case. And you just keep...and you have to keep those together because you have the original jurisdiction over the child on the dependency... [LB669]

VERNON DANIELS: That's right. And it can work the other way around. A person may be a three or four status, and before it's over with there's a delinquency, and there may be an abuse or neglect case that's there, as well. And so...and then you just begin to have to deal with all of them together. [LB669]

SENATOR COUNCIL: And still try to meet those...and you still try to hit those targets. [LB669]

VERNON DANIELS: Try to meet the targets because each one of those cases have to be considered individually, and each one has their own set of evidence that can and cannot come in. And if one, what might be considered for rehabilitative purposes under a delinquency docket may not be considered for the abuse/neglect docket. [LB669]

SENATOR COUNCIL: Well, thank you very much. [LB669]

VERNON DANIELS: Um-hum. [LB669]

SENATOR ASHFORD: Yeah. Judge, it's a great presentation. In my experience here

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over the years, and certainly now with the issues we're dealing with in Omaha regarding street violence and those things, in my view there is nothing more critical for this Legislature than to deal with the issues of juveniles and street violence and what happens, why they get there, how they get there, and what we can do to try to address it. And, clearly, the burden on the juvenile courts is significant, and the work that you do is astounding, in my view, based on the resources that you do have. I mean, I just can't even...it's hard to express how much, what the burdens are and what the ramifications are, and I mean, just getting one's arms around it is hard. But you've made a good presentation and made a good case. Thanks. Any other questions? Thank you. [LB669]

VERNON DANIELS: Thank you very much. [LB669]

SENATOR ASHFORD: Thanks, Judge. Other proponents? [LB669]

ROBERT HILLIS: (Exhibit 6) Good afternoon. My name is Robert Hillis, and my last name is spelled H-i-l-l-i-s. I'm from Fremont, Nebraska, and I'm here on behalf of the Nebraska State Bar Association to support this bill. As you may know, the state bar represents 6,000 attorneys and judges in this state that have active licenses. The state bar supports the recommendations of the Judicial Resources Commission that a total of five new judges be created in Nebraska. The need for these new judges is supported by the Supreme Court's weighted caseload study, by the testimony today of the judges that have gone before me, and the historic testimony of judges from these courts in front of the Legislature, as well as the Judicial Resources Commission. It is sometimes forgotten that the judicial branch is a branch of government just like the legislative and executive branch. Perhaps this occurs because the judicial branch lacks the political power of the other two branches. But like the other two branches of government, the judicial branch's responsibility is to serve the people of this state. Without adequate judicial resources, access to justice is delayed or denied, and the legal business of the people cannot be conducted. The Bar Association, through its judicial resources committee, has studied this issue with respect to these five courts for several years now. And we had hearings on October 1 and October 10 of 2008 to consider the new judicial positions. We received and considered evidence with respect to the new judges, and the committee voted unanimously to support the appointment of the five new judges. It then went on to...the issue then went on to the NSBA's house of delegates which also approved a resolution calling for the five new judgeships. And the house, as you may know, is our governing body. These recommendations were then given to the state Judicial Resources Commission which also voted to recommend the five new judgeships. I anticipate that amongst your committee there is at least some discussion about moving district boundaries, transferring counties from one district to another, and other similar proposals. I also suspect that the committee members are aware of the Judicial Administration and Structure Task Force that studied our court system over the last several years. It issued a report and recommendations to create a more efficient judicial system. Many of the task force recommendations were reviewed and adopted

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by the Unicameral last year. I want to remind this committee that the task force also concluded that moving single counties in and out of particular districts or moving district boundaries would not alleviate the need for additional judges. The new judges would provide much needed access to the particular courts. Our court system often deals with critical issues in the lives of Nebraskans. Access to the courts is fundamental to a strong and viable state. The NSBA supports this bill. I've given you a chart today that was just given to me today but is quite interesting in the sense that it gives the history of judicial appointments in this state. And I think it's noteworthy from the point of view that many of the recent appointments have been in these courts that we're talking about, and yet the need still continues and no doubt will continue in the future because that's where our population growth is. If there are any questions I'll try and answer them. [LB669]

SENATOR ASHFORD: Any questions? Bob. Yes, Senator Lathrop. [LB669]

SENATOR LATHROP: I do have a question for you, Bob, and that is do we have national standards for what a district court or a county court judge ought to be carrying for a caseload, and where are we at in relationship to those, if you know? [LB669]

ROBERT HILLIS: Well, I think...and I'm just testifying here from my memory, there was an organization, I think out of Atlanta, that originally did our first caseload study, and their standards for the weighted caseloads and the caseloads that judges ought to be able to handle were obviously influenced by what they had studied around the country. And right now the name escapes me of the organization. I'm sure we can supply that to you, Senator. But from that point of view, and then I believe we've turned the function of doing the caseload study over to the Court Administrator's Office, and that they generally follow those guidelines. [LB669]

SENATOR LATHROP: I would be interested in two things if I can. One would be whether the ABA or a similar organization has standards for caseloads, and the second would be what the averages are across the country, or if we can get the statistical information on what the equivalent of district court judges across the country are doing and likewise with the county and juvenile court. Then we have some measure for whether these numbers tell us, yeah, nobody lets it get this high and here we are in Nebraska with a caseload that's way, you know, one and a half times the average or one and a half times the standard. [LB669]

ROBERT HILLIS: And my only comment to that would be I think that you have to take all of that with a grain of salt. For example, nationally not all judges are going to travel like the judges do in the western half of our state. You know, every court system has its own little nuances. The administrative appeals in Lancaster District Court would be an example, so. But we will get that information for you. [LB669]

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SENATOR LATHROP: I appreciate it. Thank you. [LB669]

SENATOR ASHFORD: Any other questions of Bob? Yeah, and I think our challenge--I agree, you need the five judges--the challenge is...and we also need to keep the salaries of the judges at a point where they're competitive with the market so that we can continue as we have done: attract topflight people to the bench. It's a tough nut when you're dealing with difficult economic times, but it's a challenge for us to see if we can sort it out. I mean, you've made your case, I think, in my view. Thanks, Bob. [LB669]

ROBERT HILLIS: Thank you. [LB669]

SENATOR ASHFORD: How many other proponents do we have back here? Okay. [LB669]

MARK KRIEGER: Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Mark J. Krieger. I'm an attorney in private practice here in Lincoln, Nebraska, with the firm of Bowman and Krieger. I've been involved in civil litigation in the district courts of Lancaster County for the past 22 years. I was asked to appear today by the Lincoln Bar Association to provide to this committee insights from my perspective to the necessity of an eighth judgeship for the district court of Lancaster County as proposed in LB669. As the statistics bear out, the caseload of the district court in Lancaster County has become quite overwhelming over the last several years. And what I want to emphasize is that behind every one of these cases filed in this county are real citizens: injured people who have sought redress in the court; people who are getting divorced; people who have been charged with crimes; and, quite frankly, the victims of those crimes, all of whom are affected by the heavy caseloads by the district court judges in this county. Delays caused by these caseloads, in the end, really do not affect practicing attorneys as such, but they seriously affect my clients. I practice primarily divorce work. A delay from four months to eight months for a trial on issues relating to custody of the kids, in the end really doesn't affect me as a practicing lawyer. My preparation for trial simply takes place four months later. However, my client, the parties to the divorce action and their children, live through this divorce process over an extended period of time, wherein emotions, hostilities, and the chance for trouble exists and goes on every day the case is pending before a resolution that both parties believe is fair can be reached. Lancaster County is also unique in that it hears all these administrative appeals from hearings of state agencies held in Lancaster County. For instance, state employees that are terminated by a state agency have a hearing in front of the personnel board. Now, they may have worked in Chadron but they still must file their appeal from their termination in Lancaster County. These folks are waiting for a decision as to whether they are rehired or fired legitimately. They are clearly affected by the judicial delay. These examples would hold true for each of the hundreds of cases filed each year in this county. These are real people going through real trauma, which

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can be mitigated to a certain extent by funding for an additional judge, thereby lessening the caseload per courtroom and speeding the process up for all litigants. This, in the end, is the efficient administration of justice. As a Bar Association, we are committed to supporting the efforts by the Legislature to improve the functioning of our courts, the timeliness of the proceedings, and the quick and rapid disposition of disputes between parties. This has a benefit not only to the Bar Association, the judges that work these cases, but the actual litigants and citizens that are affected by each and every one of these filings that are shown in the multiple statistics that you have here today. In the end, it is good for society, as it leads to a stronger belief that redress can be sought through the courts on a timely basis. On behalf of the Lincoln Bar Association, I urge you to support LB669, creating an eighth judgeship for Lancaster County. [LB669]

SENATOR ASHFORD: Thanks, Mark. Any questions of Mark? Thank you, sir. [LB669]

MARK KRIEGER: Thank you. [LB669]

JOE KELLY: Mr. Chairman and members of the committee, my name is Joe Kelly, K-e-l-l-y. I'm a chief deputy in the Lancaster County Attorneys Office. I'm here today to support LB669. I want to use my limited time to discuss a short-term fix or alternative in the district court for Lancaster County, Nebraska. As Judge Merritt already said, presently there are four visiting judges who are coming in as often as they can to take on what amounts to one-half judge caseload. But any of you who have practiced law, I think can imagine the difficulties that are involved with those judges always being at that distance. We utilize e-mail. We utilize telephone, fax, whatever else we can to try and move the cases on. But the bottom line is, those cases move slower than the other cases in our system. So I have heard discussion, and this is, I think, rightly before this committee, but ultimately an Appropriations Committee issue, but the proposal to give the Chief Justice within his budget enough for a one-half time part-time district court judge in Lancaster County, Nebraska, for a limited period--two years, let's say. The advantages with that, it's short-term, it I think would conclusively make a case which is already conclusively made: the need for the new judge. And it would make better use of that time if one judge, retired, sitting in Lancaster County, Nebraska, was able to hear all of those cases rather than what we have now--four; and what we started out with--seven. That was a tough way to do it with all of those judges. They worked very hard at it and they continue to work hard at it, but you cannot move those cases very quick. [LB669]

SENATOR ASHFORD: It's a good idea and I have talked to the Chief Justice about it. I think it makes a lot of sense. And if Judge Chevront, I guess, is going to be...Chevront is going to be retiring or is retired or is going to... [LB669]

JOE KELLY: He's current now; active. [LB669]

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SENATOR ASHFORD: Yeah, but there's some discussion about him wanting to retire or one of the Lancaster judges retiring, then could come back and work part-time. I mean, that makes a lot of sense. I wonder if we need to...do we need to...in order to do that, Joe, do we need to...? We don't need to change the qualification statutes, or do we? [LB669]

JOE KELLY: I don't think you do. I think you... [LB669]

SENATOR ASHFORD: There's enough...there's juris...we can bring a judge back. Or we do it now anyway on the Supreme Court, I guess, from time to time. [LB669]

JOE KELLY: Yes. [LB669]

SENATOR ASHFORD: So you think we can do it. It would just be a question of the money. [LB669]

JOE KELLY: Yes. [LB669]

SENATOR ASHFORD: Okay. That's a good idea. Thanks, Joe. Any other proponents? Opponents? Neutral? Senator Coash. This is a big issue and we're going to give it quite a bit of deliberation in the committee, so thank you all for your comments. Stacey? (See also Exhibit 14) [LB669]

SENATOR ASHFORD: LB332 is the next bill. [LB332]

STACEY TROUT: Chairman Ashford and members of the committee, I'm here to introduce LB332 on behalf of Senator Ashford. LB332 is an annual cleanup bill brought to the Legislature by the County Judges Association. It makes some noncontroversial procedural changes that judges have seen should be cleaned up. And the primary changes include: providing that any of the courts in the state could, upon the request of the county attorney for good cause, appoint an attorney to act as county attorney in the event of an absence, sickness, disability, or conflict of interest. Next, it will provide that a lower court would not have to swear in an interpreter who has already been sworn in by the Supreme Court. This would be more efficient than the lower court swearing in an interpreter before each proceeding. Next, a judgment creditor could request the court clerk to issue execution on the judgment and direct execution on the judgment to any county court in the state without the necessity of filing a transcript in the receiving county. Next, this bill would provide that a person could file an action in county court to determine whether the decedent left a valid will by depositing with the clerk of the county court the required fee if there is any objection to the probate of a will or if a petition is filed to set aside an informal probate. This bill would also add school districts and school personnel to the list of those who would be required to cooperate with the requests of a CASA volunteer and would allow school records to be shared with

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persons authorized by the court. Finally, the bill would provide that the trial for a Class III, Class IV, or Class V misdemeanor shall be by the court without a jury. There have been objections raised about this provision and since the bill is intended to include noncontroversial items, this provision will be amended out of the bill. And I know Judge McDermott is here to testify further on this, and there are a couple of amendments that have been offered. [LB332]

SENATOR ASHFORD: Thank you, Stacey. Thank you. [LB332]

STACEY TROUT: I didn't spell my name. It's T-r-o-u-t. [LB332]

SENATOR ASHFORD: Judge McDermott. [LB332]

PATRICK McDERMOTT: (Exhibit 7) Mr. Chairman, members of the committee, my name is Pat McDermott. I'm a county judge from the fifth judicial district. I'm the cochairman of the legislative committee. First of all, my apologies to Senator Ashford and the committee. A portion of this bill that was introduced shouldn't have been there, and it's because somebody e-mailed the wrong list. We had discussed the will contest at the county judges meeting. It was not approved by the organization. I inadvertently picked the wrong list, so please ignore that provision. Secondly, the provision on the jury trial... [LB332]

SENATOR ASHFORD: It did get a reaction, Judge McDermott. [LB332]

PATRICK McDERMOTT: The jury trial issue, just before the hearing today I was informed by the trial lawyers and the Bar Association that they had some amendments. They shared those with me. The association has no objection to those amendments. We bring this to the committee as an efficiency issue, and if the bar has objections or anyone has objections it would be inappropriate for us to take a position on it. Section 1 is very technical. It just identifies the courts. Court was a vague term in that statute. It just literally says every court before whom you appear can appoint a prosecutor if necessary. Don't swear in interpreters every time you turn around. In my court, I'd be giving that oath about 50 times a day, so this just is another efficiency thing. Section 3 is by far the most critical and important provision. This is the one on garnishment. If you will note, there is a fiscal note that actually says this saves money. We don't ever see those. But this is estimated to save the court system about \$280,000 a year. It avoided dual entry of cases. The adoption issue in Section 7 is a Catch-22 problem. You file an adoption. We have 4-8 weeks to hold a hearing but you have to order a home study, and the department won't do it until there's a case to order it in, and then they can't get it done in time. This simply gives us the flexibility to, by agreement of the parties, to continue. The last section of the bill deals with the sharing of information with CASA volunteers by appropriate agencies with information about children they are looking after. The other one, Section 8 is maybe a little bit of a ticky-tacky, but we're required to

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issue the caregiver forms to each one of the foster care parents who's a caregiver for our children in juvenile court. These are available on the Web. Most of our foster parents are pretty sophisticated. It's easier for them to just download it. This gives the clerk the option of informing them where they can download it. If it's anybody who wants the forms, we will certainly provide them to them. But that's in essence what this bill is. It's kind of a cleanup. We appreciate Senator Ashford introducing it for the association. I'd be happy to answer any questions. [LB332]

SENATOR ASHFORD: Any questions of Judge McDermott? Could you just explain the savings, how this savings is effected, Judge? [LB332]

PATRICK McDERMOTT: Okay. In just giving this example, I enter a judgment in Colfax County. We're only 18 miles from Columbus but that's Platte County. The person against whom the judgment is rendered actually is employed in Platte County. That means the creditor's attorney has to transcribe the judgment from the Colfax County Court to the Platte County Court. They have to open a case. They have to enter all that data into JUSTICE in order to issue the garnishment. We are avoiding and saving money by not doing that process. Now there's a qualitative increase because, as the lawyers probably will recognize, 98 percent of the requests for hearings on garnishment, the litigant wants to talk about the underlying judgment, not the garnishment. Most of the time I'm sitting there looking at a judgment from another county, I have no idea the basis of that judgment. I just know it's transcribed and it's filed. So I have to tell that person, sorry, can't help you; if you've got a problem with the judgment, you've got to go where it was issued anyway. So this will save us an enormous amount of time and money and effort, and is probably, for such a simple thing, a very important change in the law. [LB332]

SENATOR ASHFORD: Yes, Senator Lathrop. [LB332]

SENATOR LATHROP: Huge efficiency if you're doing collection work. [LB332]

PATRICK McDERMOTT: Exactly. [LB332]

SENATOR LATHROP: I've got another question for you. You were here for the previous hearing. [LB332]

PATRICK McDERMOTT: Um-hum. [LB332]

SENATOR LATHROP: Now my question is if we're filing these things under the old system, assuming we make this change, are they counted as a new filing in the county court numbers that we're looking at? [LB332]

PATRICK McDERMOTT: They are not. Those transcribed judgments, you don't. And

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Janice Walker is here and she can probably correct me if I'm wrong, but in justice statistics, I do not believe those count as a new case for the receiving court. So they have to do that work; they get no credit for it. [LB332]

SENATOR LATHROP: We might eliminate a little work in the county courtroom. [LB332]

PATRICK McDERMOTT: I asked our clerk in Platte County, who is the civil clerk. She estimates that it could save her one full day per week,... [LB332]

SENATOR LATHROP: Wow. [LB332]

PATRICK McDERMOTT: ...that she spends about a day of her work time entering these, because that's a large employment area that draws from all the surrounding counties. So that may be a little unique, but I could imagine that in Douglas and Lancaster and Sarpy Counties, those could be significant labor intensive. [LB332]

SENATOR LATHROP: I expect so. How much time is that going to save the county court judges then, if we are saving... [LB332]

PATRICK McDERMOTT: County court judges, I don't know that it's going to save us any significant time. It's going to save staff time. [LB332]

SENATOR LATHROP: Okay. [LB332]

PATRICK McDERMOTT: We may get a somewhat reduced request for a hearing level, but we don't get many of those. At least I don't. [LB332]

SENATOR LATHROP: Okay. All right, thanks, Judge. [LB332]

SENATOR ASHFORD: Yes. Senator Council. [LB332]

SENATOR COUNCIL: Yes. Thank you, Judge McDermott, for appearing. My question...and you just have to...I just don't know: What is the procedure for swearing in an interpreter by the Supreme Court? Is it once they're certified as interpreters? [LB332]

PATRICK McDERMOTT: When they become certified. There's two levels of interpreter. There's registered and certified. A registered interpreter has achieved a certain score on a proficiency exam but not enough to be certified as a Nebraska court interpreter. When you achieve certification through the testing process, there is a ceremonial swearing in by the Supreme Court of that interpreter, much like we did as lawyers. We take the oath. There is a statutory oath required for interpreters in each case, and it becomes unnecessarily repetitive to give that oath on each case. To be frank with you, what I do--I have the same interpreters all the time--we have them sign a written oath and we

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put it in each case so that we don't take court time to administer that oath or you would be there administering that oath forever. So this just recognizes the fact that they've been certified by the Nebraska Supreme Court. They are qualified and there's no need to have them swear to do again what they've already sworn to. [LB332]

SENATOR COUNCIL: Okay, because my question is that if someone were to challenge a decision resulting from that case, and there's no record of that interpreter having taken that oath, don't you think it's necessary in, as a part of this cleanup that they're not required to take the oath, but they are required to execute that the file must contain an executed certification? [LB332]

PATRICK McDERMOTT: What we would do, as judges, is...you know, I'm going through: present in court, the prosecutor, the defendant, the defendant's counsel, the court-certified interpreter is present. If I identify that interpreter as a certified interpreter, I've made a judicial finding that this is a person who's qualified, and I think that would be sufficient in the record. [LB332]

SENATOR COUNCIL: Okay, because I just don't want to get down the road that... [LB332]

PATRICK McDERMOTT: No, I understand. We don't want to...a needless... [LB332]

SENATOR COUNCIL: Someone may not take...show to the lengths that you do to make that record, and then someone challenges later that the defendant...you know. [LB332]

PATRICK McDERMOTT: We would also know that by the fact that we would list the interpreter's name and we would know, by date, whether or not they appeared on the certified register of interpreters in the state of Nebraska. Now this would probably not include what we call LOTS, which are Languages Other Than Spanish. We're probably going to still have to... [LB332]

SENATOR COUNCIL: You're still going to have to... [LB332]

PATRICK McDERMOTT: ...swear them in because there are no certified interpreters in any language other than Spanish. [LB332]

SENATOR COUNCIL: Okay. And my next question has to do with the Sections 5 and 6, so it's your testimony that an amendment removing those from the omnibus bill would be appropriate. [LB332]

PATRICK McDERMOTT: Yeah, that's my fault. They were never supposed to be in the list. We talked about it. That's when we were talking about how do you balance load between the two courts. That was one thing we discussed is a possibility of taking some

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burden off the district court. [LB332]

SENATOR COUNCIL: Okay, and now...and then the final thing is there will be some discussion with regard to an amendment of Section 4, and that has to do with jury trials. Is that correct? [LB332]

PATRICK McDERMOTT: That's right. And we'll defer to the Bar Association's opinion on that. [LB332]

SENATOR COUNCIL: Okay. Thank you very much, Judge McDermott. [LB332]

SENATOR ASHFORD: Thanks, Judge. Appreciate it. Good to see you. Bill. [LB332]

BILL MUELLER: (Exhibit 8) Mr. Chairman, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association in support of LB332. The page is providing you an amendment that I have provided to your counsel, Ms. Trout. And what this amendment will do...and you heard Judge McDermott testify that changing the will contest procedure was not intended to be part of this bill, so...and that part of this change is contained in Sections 5 and 6, so that will remain as it is, where will contest matters will be tried in the district court where they are currently tried. The second part of the amendment that the Bar Association would ask you to adopt is pertaining to which classes of misdemeanors a person would be eligible to request a jury trial. The bill, as introduced, would eliminate that right in Class III, Class IIIA, Class IV, and Class V misdemeanors. Our amendment would retain the right to a jury trial in Class III misdemeanors, where a conviction could result in up to a three-month imprisonment, and we would ask that a jury trial be retained in Class IIIA misdemeanors where the defendant, upon conviction, could be imprisoned for seven days. We have no objection to removing the right to jury trial in Class IV misdemeanors where there is no imprisonment provided or Class V misdemeanors where there also is no imprisonment provided. With those changes, we would support the bill. Be happy to answer any questions you may have. [LB332]

SENATOR ASHFORD: Yeah, I...go ahead, Senator Lathrop. [LB332]

SENATOR LATHROP: Didn't you just take out Section 4? I was circling these as you went along, and you said we have no objection to taking out Class III, IIIA, IV, and V? [LB332]

BILL MUELLER: No. We have no objection to taking out IV and...well, we have no...this is backward. We have no objection keeping the Class IV language in the bill; we have no objection to keeping the Class V language in the bill. [LB332]

SENATOR ASHFORD: Just the Class III is the only... [LB332]

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BILL MUELLER: We would ask you to strike the Class III and the Class IIIA. [LB332]

SENATOR LATHROP: And Section 6 is out because that involved the... [LB332]

BILL MUELLER: Sections 5 and 6; correct. And we've actually provided your counsel two amendments which we've talked, and she'll merge those together. I apologize. That was not done in one. [LB332]

SENATOR LATHROP: That's all I have. [LB332]

SENATOR ASHFORD: And I'm sure this...without having a schedule of crimes and misdemeanor IV, none of those involve acts of violence, do they? I don't believe. Or do they? I... [LB332]

BILL MUELLER: I don't know. I went back and looked at 28-106, which is the penalty statute, to look and see what the various penalties are. [LB332]

SENATOR ASHFORD: There are no domestic abuse...there's...is there anything? No, I don't think there is. We'll look at it but, I mean, I don't think so. Okay. [LB332]

BILL MUELLER: I don't know. [LB332]

SENATOR ASHFORD: Four? [LB332]

SENATOR COUNCIL: We may need to look because Class IV may involve... [LB332]

SENATOR ASHFORD: Yeah. I just want to make sure it doesn't involve some sort of crime of violence or act of violence; but it doesn't, Jim says, so I guess we're okay. All right, thanks. [LB332]

BILL MUELLER: There are others in the room who know more than I do. (Laugh)
[LB332]

SENATOR ASHFORD: Well, hopefully more than me, which would be very helpful. Thank you. [LB332]

BILL MUELLER: Thank you. [LB332]

SENATOR ASHFORD: Any other proponents? [LB332]

SCOTT TINGELHOFF: Good afternoon, Senator Ashford and the rest of the committee. My name is Scott Tingelhoff, T-i-n-g-e-l-h-o-f-f. I am the Saunders County attorney and

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speaking on behalf of the County Attorneys Association. We are in favor of LB332, and the two areas that mainly affect the county attorneys would be the clarification of when court appointments can be made for the county attorneys; and second, we would be in favor and would be okay with the amendment on the jury trials. We do think it improves the efficiency of the court in not having jury trials, because there is no imprisonment penalties for the Class IV and Class V's. [LB332]

SENATOR ASHFORD: Welcome back, Scott. [LB332]

SCOTT TINGELHOFF: Thank you. [LB332]

SENATOR ASHFORD: Any other questions of Scott? Okay, thank you. [LB332]

SCOTT TINGELHOFF: Thank you. [LB332]

SENATOR ASHFORD: Janice. How many other proponents do we have here? How about opponents? Okay. Go ahead. [LB332]

JANICE WALKER: Good afternoon, Senator Ashford, members of the committee. I'm Janice Walker, the State Court Administrator, and I'm here to testify positively about this bill, and in particular the section that regards transferring civil judgments from county to county in order to have a garnishment. We had about 22,000 of such transfers last year in the county courts, alone. It is a significant workload issue. It's a cost issue for litigants because they pay an additional fee when they transfer this case. It will simplify the workload of our staff and be quite a savings for us in that regard, so I would ask you to give positive consideration. [LB332]

SENATOR ASHFORD: Any questions of Janice? Where are you going to spend the money--that you're saving? [LB332]

JANICE WALKER: Well, let me clarify that. [LB332]

SENATOR ASHFORD: Oh. [LB332]

JANICE WALKER: Actually our fiscal note said we are going to lose money. [LB332]

SENATOR ASHFORD: Lose money. [LB332]

JANICE WALKER: Yes. There will be...we will not receive the \$20 per filing. [LB332]

SENATOR ASHFORD: Okay. [LB332]

JANICE WALKER: So we will actually see a reduction in fees, but... [LB332]

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SENATOR ASHFORD: Okay. But it obviously is an efficiency issue. [LB332]

JANICE WALKER: Absolutely. [LB332]

SENATOR ASHFORD: Okay. [LB332]

JANICE WALKER: Absolutely. I don't ever want to... [LB332]

SENATOR ASHFORD: I'm trying to find every dime I can find, Janice. [LB332]

JANICE WALKER: I know. So am I. I'm making an exception in this case. [LB332]

SENATOR ASHFORD: Thank you. [LB332]

JANICE WALKER: You're welcome. [LB332]

SENATOR ASHFORD: Other proponents. [LB332]

JEREMIAH LUEBBE: Good afternoon, Senator Ashford and members of the committee. My name is Jeremiah Luebbe. I'm general counsel for Credit Management Services, a debt collection agency in Grand Island, Nebraska. I don't want to belabor the point as to Section 3 of the bill, however, I mean, obviously there will be some duplicative data entry, efficiencies, cost savings for the judgment creditor, for the up-front cost. The judgment debtor eventually has to pay that cost back, the \$20 transcription fee. I would note one other thing. The garnishee being--now, by the garnishee I mean the employer or the bank account, the bank that possesses these funds--the garnishment has to be filed where that garnishee is located, as we heard from the judge before, the Platte County situation. One other thing: Nebraska HHS independent contractors that might live in Thurston County, those no county court will process a garnishment of that judgment debtor if they work for the HHS except for the Lancaster County court. Similarly, with regards to banks, if the bank is located in Lincoln, several times I'll have a Custer County judgment debtor that lives in Custer County, lives in Broken Bow or some other out-of-state location, but they have to travel to Lincoln to even have their garnishment objection heard because of the statutes' current language. So I would, on behalf of Credit Management, ask you to pass this bill. Thank you. [LB332]

SENATOR ASHFORD: Thank you. Any questions? Seeing none, thank you. Other proponents? Opponents? Neutral? That concludes the hearing on LB332. LB333 is mine again. [LB332]

SENATOR ASHFORD: Good afternoon, Senator Lathrop and members of the committee. My name is Brad Ashford. I represent Legislative District 20 in Omaha, and I

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am here to introduce LB333, which is a bill brought to me by the Supreme Court. The bill concerns fees that are assessed by the courts. It creates the Supreme Court Access to Justice Fund and fee of \$1. This fund and fee is intended to support programs related to interpreter services for court and probation access to justice for indigent and pro se individuals. This is especially important to me. Over the fall and throughout the summer, our committee--and thanks to Senator Lathrop and the members of the committee that were here last year--really focused on the issue of immigration and the impact of immigration on the courts and other services provided by the state. And the committee requested that I and others spend some time looking across the state to see what the needs of the immigrant population in Nebraska are. And one of the critical needs of the immigrant population in our state is our interpreters, both in the court system and otherwise, clearly in the healthcare system, which this does not address, but in the court system. So I appreciate the Supreme Court's support of this \$1 fee, and think it is absolutely critical to the fair and equal administration of justice in our state. LB333 will increase the Supreme Court automation fee from \$6 to \$8 per case. You've heard a little bit of talk today from the judges about how they are implementing the court automation across the state. It is invaluable and I think an important...this is an important provision. This fee increase is required also for an expected rise in the court's annual retainer fee to the Office of the Chief Information Officer, which covers the court's portion of the hardware and maintenance for trial courts. And this would be an internal increase in fee. It will cover the conversion of Douglas County District Court and the Separate Juvenile Court in Douglas County to the state--I believe just in Douglas County but the Supreme Court can correct me--to the statewide JUSTICE system, and the cost for the 175 additional staff and judges to be equipped with personal computers. The automation that the upgraded technology for the courts. I remember in my first stint in the Legislature in the mid-80s when we first did automation state...to implement an automation system in the state, generally, and it was quite an effort. So we've come a long way, and this will kind of finish...help finish this off for the court system. It's very important. And then thirdly, it will increase the judicial branch education fee from \$1 to \$2 per case, which is necessary for the full funding of training and education for employees and officers of the judicial branch. I have spent some time talking about these matters with our colleagues in the judicial branch in the Supreme Court, and I am...obviously, raising fees is something one does with caution, but I am firmly convinced that the fees that are being requested by the court are reasonable and are reasonably related to needs that the court has that are legitimate, and will expedite the administration of justice and serve the public. So with that I would commend these proposals to you. [LB333]

SENATOR LATHROP: Thank you, Senator Ashford. Senator Council, you're recognized. [LB333]

SENATOR COUNCIL: Yes, Senator Ashford. Recognizing that your bill, LB333, provides for the equivalent of a total increase of \$3, there are other bills that have been

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introduced, though, that provide for additional increases in fees. Any relationship between your bill and the fee increases or any distinction between the basis for the increases in the bill you've introduced and the other bills? [LB333]

SENATOR ASHFORD: In fact, I have one (laugh) which I'm probably not going to pursue, but the main difference, Senator Council--and it's a good question and these are, when we get into fees, it's important that we have a thorough discussion--these are proposals that come from the court system. I don't believe the others do. I could be wrong. There is a fee increase, I believe, involving legal aid, which I also strongly support. But you're right. I mean, the fee is...we have to be very cautious about these things as we address them. [LB333]

SENATOR COUNCIL: Okay. Now and I...Janice, I presume you're going to address LB333? You're going to testify on LB333? [LB333]

JANICE WALKER: I certainly can. [LB333]

SENATOR COUNCIL: Okay, because one of the points that was raised, and that is I guess what I want the record to note, that in terms of the Supreme Court, their perspective is as long as the fees go to fund court services or improve access to justice, then it's justified and falls within the constitutional provisions in terms of what fees are to be used for, and that in this case that the providing for the, and the fact that it's the Supreme Court Access to Justice Cash Fund, so I can't think of any (laugh) more explicit statement of access being the basis for the fee increase (inaudible). [LB333]

SENATOR ASHFORD: And in actuality, Senator, I've spent a great deal of time discussing these matters with the Supreme Court. I'm convinced that they are absolutely essential to the administration of...they have a direct application to the administration of justice, and it...but you're right, their... [LB333]

SENATOR COUNCIL: Yeah, but I just want to be sure that everyone is aware that we're going to have to place them in the balance with the other fee... [LB333]

SENATOR ASHFORD: There are other fees being requested... [LB333]

SENATOR COUNCIL: Right. [LB333]

SENATOR ASHFORD: ...and they are for good reason and good purpose. [LB333]

SENATOR COUNCIL: That's all, Senator Lathrop. Thank you. [LB333]

SENATOR LATHROP: Thank you. And thank you, Senator Ashford. Are there any proponents of LB333? It looks like we have the Chief here today. Good afternoon.

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[LB333]

MICHAEL HEAVICAN: (Exhibit 9) Good afternoon, Mr. Chairman and fellow senators on the committee. I appreciate your time here today. I'll begin by addressing some of the questions or comments that Senator Council had. [LB333]

SENATOR LATHROP: We're going to have to have you--this sounds like an American Express card commercial--but we've got to have you say your name. (Laughter) [LB333]

MICHAEL HEAVICAN: Oh, I'm sorry. I'm Mike Heavican. I am the Chief Justice of the Nebraska Supreme Court. Appreciate that. Senator Council noted that you all got a letter from the court indicating that we need to be careful about fees because fees very directly affect the access that everybody in the state has to the courts, and there is a history of the Legislature respecting that and the court respecting that. With that in mind, we are asking actually for a \$4 increase for filing fees that would go to the court: \$2 for the automation fee, and Judge Cassel will be addressing that; \$1 for the court's judicial branch education fund, and Justice Gerrard will be addressing that; and \$1 for the court's Access to Justice fee, and I'll make a few comments about that in a second. You've got some handouts today, I believe, which give you a summary, first of all, of all of the money that the courts collect for the various governmental bodies in the state, and some of that has to do directly with fees and others beyond fees. And you also got a handout which shows you exactly what the fees are in various cases and where they go. To give you some context of where our fees in Nebraska stand as opposed to some of the states around us: a felony filing fee in Nebraska is currently \$66; in Colorado that current filing fee is \$163; and in Missouri, a felony filing fee is \$329. For a misdemeanor traffic case in Nebraska, as some of you may know, that is \$44; currently, in Missouri, that is \$116. So what I'm trying to impress upon you is our fees are quite modest in Nebraska, as compared to most of the states around us. Now, in regard to the Access for Justice fee, which we are requesting for the courts. In my State of the Judiciary speech, I talked about two of our biggest challenges in the court system being the cost of interpreters and also dealing with self-represented litigants in the court system. And this \$1 would go to addressing both of those particular challenges. We have no interpreter coordinator in the court system at the moment, so we are having a very difficult time getting a grasp on the \$1 million-plus that we spend every year on interpreters in the courts. The fee would also be used in regard to some of the pro se difficulties that we have in expanding pro se self-help centers outside the cities of Lincoln and Omaha. We have many forms on the court's Web site that the number of forms needs to be expanded, and translating those forms into Spanish and other languages needs to be accomplished. We want to be a partner with the Bar Association, I mentioned, in expanding those self-help centers outside of Lincoln and Omaha. We want to be a partner with the counties so that they can have scanners to speed up conversion to electronic filing. We also want to partner with the counties to purchase videoconferencing equipment to reduce travel costs, particularly in regard to

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interpreters, so we can have interpreters at off-site locations that can be used in particular hearings in interpreter kinds of situations. We also do a good deal of training and testing of interpreter candidates, and we need to have those locations at more places than just Lincoln, Nebraska, and we need to do a better job in getting interpreter services, particularly to courts that are in the more rural parts of the state. So that gives you some idea of what we would use the Access to Justice fee. Judge Cassel and Justice Gerrard will come forward and talk to you a little bit now about the other \$3. Does anybody have questions? [LB333]

SENATOR ASHFORD: Well, I just would...I do want to commend you, Chief Justice, for your commitment to the justice fund and the comments that you made to us in the Legislature of recognizing what is a critical need in the community and throughout the state, and this is a significant commitment to that and I applaud you for it. [LB333]

MICHAEL HEAVICAN: Thank you. And I want to take this opportunity to thank all of you again for allowing me to give the State of the Judiciary speech, which is extremely helpful to us, and I hope it is to you too. Thank you. [LB333]

WILLIAM CASSEL: Good afternoon, Mr. Chairman and members of the committee. My name is William Cassel, C-a-s-s-e-l. I'm a judge of the Nebraska Court of Appeals, but for purposes of today I have on my hat as chair of the Supreme Court committee on technology. Technology has exploded in the court system. This is the single biggest thing that we can do to increase efficiency and service in the courts. And with technology, the users want it; they want it all. They want the best they can have and they want it yesterday, and we haven't been able to do all of that. We have a vision in the technology committee of a paperless system from top to bottom, from county court to district court, to the Court of Appeals and the Supreme Court, where all of the filings can be made electronically; they can flow electronically from court to court; that the records can be maintained in paperless form; and that the access is provided to the litigants, to the lawyers, and to the public on an immediate 24-hour basis. Electronic filing is in its infancy in this state, but we are slowly but steadily building a top-to-bottom system that I am convinced when we have completed the system it will be the marvel of the nation; that no other state will have the same top-to-bottom system that covers all of the courts in a state in the same fashion that we do. Is this going to happen this year? No. Is it going to happen next year? Probably not. Is it going to happen in my career? I certainly hope so. But it's a process that's ongoing right now. The money that's proposed from the \$2 fee is essential. Right now, the largest district court, trial court in Nebraska is not part of our computerized case management system; and the system that's interactive with that forms the heart of our e-filing system, and it's essential that we bring that court, as well as the Separate Juvenile Court of Douglas County into the system. There are a lot of other needs for technology, such as courtrooms across the state. We're just beginning the process of developing standards for trial courts to say what does a trial court need, who's going to provide it, what is the funding mechanism

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for courts all across the state. There are no existing standards and part of our effort is to develop that. And I see my time is approaching its end. I'd be glad to answer any questions that you may have. [LB333]

SENATOR LATHROP: Judge, I have a question for you, and that is typically if you automate things--great goal, going paperless--where's the savings going to be? [LB333]

WILLIAM CASSEL: Primarily staff. [LB333]

SENATOR LATHROP: Okay. The judges...you don't think it will...is there anything about it that's going to...? Now, I'm thinking about audiovisual court appearances so that maybe a judge that normally would be in his car driving from one community to the next, doesn't have to. Are we...is there a savings in judge time and is there going to be a savings in--I'm going to ask this is three parts. Is there going to be a savings for court staff? And then if you are a lawyer practicing in front of the courts--and I know we have some here that probably are concerned about the fees going up particularly in collection cases--what's the benefit to the lawyers that practice? [LB333]

WILLIAM CASSEL: The benefit to the lawyers--I'll start with the last one first--the benefit to the lawyers is actually access to the courthouse on a...every courthouse in the state on a basis that you've never had before. And that is from your desktop in your office, for a small fee you can access the file and any--ultimately; right now, it's a limited number of courts. But ultimately, any court in the state, any time of day, you can look at the files, you can copy any of the documents. Right now, the fee for those counties that are on-line that are imaging documents, that essentially their case files are on-line and available now, you can for a \$1 fee, you can look at any document, unlimited, within that case. You can copy it; store it on your computer; and there is... [LB333]

SENATOR LATHROP: Right now, we're charging people \$1 a file? [LB333]

WILLIAM CASSEL: One dollar per file. [LB333]

SENATOR LATHROP: So if I'm a lawyer and I want to look at a file and it's in Buffalo County, I have to pay...there is a membership fee, isn't there? [LB333]

WILLIAM CASSEL: I believe a modest...like 50...it's through Nebraska.gov, like \$50 a year or something like that. [LB333]

SENATOR LATHROP: All right. So I spend the 50 bucks and now I'm on, but every time I want to look in a file, I'm going to pay a fee of a \$1? [LB333]

WILLIAM CASSEL: You have that choice. There is also a bulk rate of \$300, I think it's per month, which is unlimited numbers of files. But even the \$1 fee, when you...you

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know, I used to practice out in greater Nebraska, and call counties around my home county. And by the time you pick up the phone, talk to the clerk in the other county, have them photocopy something out of the file, whether they fax it to you, whether they e-mail it to you or however, there's expense associated with that, and the \$1 fee is almost nothing compared to the kind of expense that we're saving. [LB333]

SENATOR LATHROP: Okay. That's of benefit to the lawyer, and you said there will be a lot of efficiencies to staff, so will we, in terms of the cost to run in the courts, will we need less staff? [LB333]

WILLIAM CASSEL: In some places, I think that's quite possible. What we're talking about with e-filing...and we haven't yet got to the biggest benefits of e-filing, but the biggest benefits of e-filing in terms of staff time are that when the lawyer or litigant who's making an electronic filing does so on the computer, much of that information that ultimately ends up in JUSTICE is keyed in by the litigant, and then it's transmitted electronically to the system. The clerk reviews it but simply accepts the filing, just hits an accept button. And then instead of having to key in all of that information again, you have the information simply automatically transfer. And that's where the staff savings will occur. And I think you've heard already it has the potential in busy courts for tremendous staff saving. Now, is this going to eliminate clerks in courts where I used to preside where you have one person in the office? No, I don't think it is. And will it save them some time for some of their other duties? Yes, I think it will. But the biggest savings will accrue in the busiest courts. [LB333]

SENATOR LATHROP: And the judges, probably not so much. [LB333]

WILLIAM CASSEL: Well, that comes not so much from the electronic filing system, although I had my...when I was a trial judge I had kind of my clerks doing the same thing for me on a more limited basis, but it will provide judges who have multicounty districts will have access to all of their files, all the time, no matter where they are, and that's a big advantage. [LB333]

SENATOR LATHROP: Okay. Thanks. [LB333]

WILLIAM CASSEL: Any other questions? Thank you very much. [LB333]

SENATOR LATHROP: Go ahead. [LB333]

JOHN GERRARD: Are you ready? [LB333]

SENATOR LATHROP: I'm ready. [LB333]

JOHN GERRARD: (Exhibit 10) Okay. Good afternoon, Mr. Chairs and members of the

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committee. My name is John Gerrard; last name is spelled G-e-r-r-a-r-d. I'm a justice on the Nebraska Supreme Court. I'm here to testify with reference to the judicial branch education filing fee, and that would be an increase from a \$1 filing fee to a \$2 filing fee--a \$1 increase. I've provided you with a two and a half page handout setting forth the reason for the increase in the filing fee, and I just really want to touch upon a couple or three highlights. One of them was a question that Senator Council asked, and particularly for the new committee members. You know, philosophically, to be here for a filing fee to train and educate your own people should really be handled out of the General Fund. I mean, I think that's been a long-term philosophy of which I do not disagree. I think it should also. But the fact of the matter is, it never has. We have begged for funding for years, and to make a long story short, I've been with JBE since the very beginning, and about five or six years ago the \$1 filing fee was created. Senator Ashford did say this would be full funding for JBE, and he hasn't been involved, so I don't blame him at all, but this would actually...this would only increase JBE...a \$1 filing fee is the equivalent of about \$380,000. An increase would get us to about \$760,000. It costs us about \$1.1 million to train. We have a little over 1,100 employees in our system, between judges and staff and probation. And particularly where the increase in the filing fee comes about in the last two years, is we have...we had a gradual training schedule, and in the last year to year and a half, we have brought on all staff now for training. Our frontline staff has had little or no training for a number of years, and there has been literally an explosion of pro se self-represented litigants. And to be able to train the staff up-front is absolutely crucial. Now the difference that we would make up, generally about \$250,000 or so, is made up through funds that...either grants or funding that we are able to apply for, and our judicial branch education administrator, Carole McMahon-Boies, has done a tremendous job doing that. In fact, in all deference to our Chief Justice and our Governor, Carole McMahon-Boies knows how to pinch a penny with the very best of them, so we're proud of that fact. We are also, I should say, attempting to do and are doing, with technology over the last year or year and a half, much more on-line training, communicating and cooperating with community colleges and things such as that, so we're not bringing people to Lincoln constantly or going out to train them. We are still doing some of that, but we are doing everything that we can to increase the efficiency, so. With that I will stop and take questions. [LB333]

SENATOR LATHROP: Very good. Thanks, Judge. Any questions? [LB333]

SENATOR ASHFORD: Yes, Judge. Maybe we've gotten the wrong information from somebody. [LB333]

JOHN GERRARD: Okay. [LB333]

SENATOR ASHFORD: With the increase, what will be the total? [LB333]

JOHN GERRARD: With the increase, a dollar, as I said, is about the equivalent of

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\$380,000 that we collect per year, so that would be \$760,000... [LB333]

SENATOR ASHFORD: Okay. They gave us a number that isn't that, so. [LB333]

JOHN GERRARD: Okay. That would be the correct number I can represent to you. [LB333]

SENATOR ASHFORD: And I believe, absolutely believe you. [LB333]

JOHN GERRARD: And it takes a little bit over a million to train, and I would say our training is a Chevy Malibu; it's not a Cadillac. Now Missouri has a Cadillac, but that's why you have a \$144 fee in Missouri. But we do try to do the best that we can. [LB333]

SENATOR LATHROP: Very good. And thanks. [LB333]

JOHN GERRARD: Thank you. Appreciate it. [LB333]

SENATOR LATHROP: Any other proponents? [LB333]

ROBERT HILLIS: Good afternoon, again, Mr. Chairman and members of the committee. My name is Robert Hillis, H-i-l-l-i-s, of Fremont, Nebraska, and I'm here on behalf of the Nebraska State Bar Association as its president, in support of LB333. I think it would serve no purpose for me to discuss the merits of this bill. I think they've been more than adequately discussed by those that have gone before me. So let me just say this, that in light of the fact that funding does not appear to be available from the general revenues of the state, the NSBA supports the imposition of these additional fees to support the court's initiatives. Although the leadership of the NSBA tends to resist the use of court fees for projects unrelated to the administration of justice or access to justice, all of these initiatives are related to the administration of justice or access, and are therefore justified. So the NSBA supports this bill and I thank you, and if there are any questions I'll try and answer them. [LB333]

SENATOR LATHROP: Thank you, Mr. Hillis. Any questions? I don't see any. Thanks for your testimony. [LB333]

ROBERT HILLIS: All right. Thank you. [LB333]

SENATOR LATHROP: Are there any other proponents wishing to testify in support of LB333? Anyone here...oh, I'm sorry, Janice. All right. [LB333]

JANICE WALKER: Sorry, Mr. Chairman. I wasn't planning to testify but I'm here to answer any questions. I believe Senator Council may have had a question, and I just also wanted to make the point that the fees that we are requesting are for items that

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otherwise would have to be funded from the General Fund. And I might just point out that our judges retirement system is funded entirely by fees and by the judges' contributions. Our education is likewise completely funded by fees. Our education and our technology are funded by fees. And if we could replace those with General Fund appropriations, that would be great. [LB333]

SENATOR LATHROP: Okay. Thank you. [LB333]

SENATOR COUNCIL: Thank you, Janice. You've answered my questions. Thank you. [LB333]

JANICE WALKER: All right. Very good. [LB333]

SENATOR LATHROP: All right. There does not appear to be any questions. Is there anyone here in opposition to LB333 who wishes to testify? [LB333]

JEREMIAH LUEBBE: (Exhibit 11) Thank you, Senator Lathrop, Senator Ashford, members of the committee. Once again my name is Jeremiah Luebbe; that's L-u-e-b-b-e. I'm general counsel for Credit Management. Credit Management is a debt collection agency. We have approximately 155 employees, three offices, headquartered out of Grand Island, and with branches in Lincoln and Kearney. I would like to start out, I guess, the county court filing fee is a debt collection agency. Fortunately in Nebraska we have county and district courts so we are able to choose a lower filing fee of \$42 currently prior to this bill. If it is passed, the bill...the court fee would go up to \$46. Since 2002, in July of 2002 it cost \$19 to file a case in county court in Nebraska. The Second Special Session of the 2002 Unicameral added the \$6 automation fee to replace loss of General Funds that had, I take it, had been historically appropriated to the Nebraska court system. Since...and after that bill was passed, the cost went to \$25. Shortly thereafter, in May 2003, the cost went up another \$9.50, when those separate cash funds in the handout that you've all received, the second set of funds, when those cash funds were implemented. In July 2005, an additional retirement fee was added on and also the legal aid fee of \$5.25 was applied to civil cases filed in the county court for the first time, which brings us to the current \$42 filing fee in county courts. The...I'm here to speak on behalf of Credit Management in opposition to this bill because, as some of you may or may not know, the debt collection industry is in many ways the last line of defense for main street America to receive back services and goods to get paid for those funds. The...as far as if the access to courts on behalf of creditors is limited, hindered by these increased fees, simply the economy of the current time. We've got a recent survey, February 2, 2009, from Ernie Goss, the Creighton professor many of you probably have heard of, and that shows that in the first part of 2009 the recession in Nebraska is going to get worse, with plunging export orders. And Nebraska's index is under the recession mark of 50. It fell from 37.1 to 35.9, from December '08 to January 2009. So I'm here to oppose this bill because as far as main street recovering those

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funds, keeping their business open, keeping their employees employed, this bill would go against and hurt those companies. I see my time is up so I'll be pleased to answer any questions you might have. [LB333]

SENATOR LATHROP: Well, thank you for your testimony. Are there any questions? I don't see any. Maybe I do have a question for you. You've heard about the automation fee. You guys are located in Grand Island. That's got to help out the business, doesn't it, being able to get on JUSTICE and be able to pull this stuff up? [LB333]

JEREMIAH LUEBBE: JUSTICE does help the system: I would say that part of the automation funds for e-filing, I question somewhat the fairness. Obviously, automation...and the more efficient the county courts... [LB333]

SENATOR LATHROP: You guys invented automation in litigation. I mean, it's...you have to, to make it work. [LB333]

JEREMIAH LUEBBE: There could be some...yeah, certainly some truth to that. The problem I see is some of the automation funds at the same we're starting e-filing, there are more requirements of the litigant. By the entering in the data we get requests from courts, sometimes there's a green card when someone is served by certified mail summons. Due to the scanning and the automation they want our clerks to tape down the green card onto a separate sheet of paper so that it will run through the scanning machine efficiently, which, honestly, hurts my client's efficiencies. [LB333]

SENATOR LATHROP: To the extent you have to tape a green card down to a plain sheet of paper. [LB333]

JEREMIAH LUEBBE: That's correct. If it's one-time situation. Representing half of the hospitals (inaudible) in the state of Nebraska, there are a lot of suits to be filed. Unfortunately, we find that to obtain payment of a bill we have to send...not only there's a federally mandated notice. We've called the debtors to try to get them to make a payment. Unfortunately, sometimes the only way to get a person to pay a bill is file a lawsuit. And to the... [LB333]

SENATOR LATHROP: Sure. There's another thing that's going on today assuming we move that bill on: being able to garnish across county lines. That's got to be huge for a collection lawyers and will save you \$20 every time you formerly had to file a judgment in a different county just to track down a debt. [LB333]

JEREMIAH LUEBBE: Yes. And I spoke in support of that bill. That's an up-front cost that the creditor, be it a first-party business, main street business, or a third-party debt collection agency, they don't have to foot that up-front cost. Obviously, they're probably not going to know and you're not going to receive that money back 100 percent of the

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time; the debtor eventually has to pay that fee. [LB333]

SENATOR LATHROP: Okay. I appreciate your testimony. Any other questions? Seeing none, thank you for coming down today and testifying on the bill. [LB333]

JEREMIAH LUEBBE: Thank you. [LB333]

SENATOR LATHROP: Anyone else in opposition? And we'll ask you to turn your cell phones off. They're trying to transcribe these proceedings. [LB333]

SENATOR ASHFORD: (Cell phone ring.) I'm sorry. I thought I turned it off, Mr. Vice Chair. [LB333]

SENATOR LATHROP: All right. Pat. [LB333]

PAT HENG: Members of the committee, my name is Pat Heng. I'm a lawyer in Omaha, also own a collection agency in Hastings and most of my practice is out in central Nebraska. Jeremiah covered, and I think the handout he has really fairly covers it. The two points that we wish to make, 90 percent of my clients are medical providers. You know, the majority of the bills I have are \$200, \$250, \$300. You know, when the court fees went up from \$19 in '02, I started letters out on these smaller accounts, just to say, listen, it's going to cost you a lot; please do it. On my firm's letterhead to try to get people's attention. You know, the bottom line on any increase in the court fees is, and I've pointed it out the past, is really it's a trickle down. Yeah, we pay it up-front, if you look at Adams County in any given day or any given week, 80 percent of the cases, and the same in probably Hall and Buffalo and Douglas County, are filed by collection agencies and civil matters. And of the...last year, 85,000 cases filed. It's a trickle-down effect. You know, I'll pay it out of my pocket right now, and I'm in a unique situation being both a lawyer as well as the owner, but as you know, every one of those is passed on to the ultimate person who really least can afford to pay that. And I collect approximately 65 of the court costs of those cases I file. So, yes, it is passed on. There's no doubt about the very positive impact of what we're asking here, what is being asked here today. But I think Senator Council pointed out we've got other fee bill, and we've got the sheriff fee bill that's out there. There's a number of fee bills that are out there that need to be encapsulated and understood here, because it is...and Jeremiah is right: It will hurt those providers that we get, because a determination has to be made now, am I going to spend, which could be \$80 in fees and sheriff fees to collect that \$240 now for that client? I mean, I have that obligation to do so if I know I can get it, but it becomes where that weighing contest becomes...and it's just the overall, I guess, fee structure that you're looking at that really impacts our industry. I'm speaking not only on my own behalf but on the behalf of the Nebraska Collector's Association here today, so. [LB333]

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SENATOR LATHROP: Very good, and thanks for your testimony. Any questions for Pat? [LB333]

SENATOR ASHFORD: The sheriffs fee is my bill too. [LB333]

PAT HENG: We know your name well, Senator. [LB333]

SENATOR LATHROP: Okay. Thanks for coming down. [LB333]

PAT HENG: All right. Thank you. [LB333]

SENATOR LATHROP: Anybody else here in opposition? Anyone here wishing to testify in a neutral capacity? Our Appropriations Chair. [LB333]

SENATOR HEIDEMANN: (Exhibit 12) Senator Lathrop, Senator Ashford, and fellow members of the Judiciary Committee, I'm Senator Lavon Heidemann, spelled H-e-i-d-e-m-a-n-n. I'm representing District 1 and kind of on behalf of the Appropriations Committee here today. I'm here to offer an amendment to LB333 which I have previously spoken to your Chairman Ashford about. You're getting the amendment right now. The Legislature enacted legislation that reduced the Law Enforcement Improvement Fund or LEIF from \$2 per court case to \$1 beginning January 1, 2007. The LEIF is used to subsidize a mandated law enforcement training at the Nebraska Law Enforcement Training, which is in Grand Island. LEIF had generated approximately \$580,000 a year in revenues used in the Nebraska Law Enforcement Training Center budget to support basic certification training. The reduction in the fee per court case to \$1 resulted in the loss of about \$290,000 per year in revenue. Over half of the states use some combination of special funds or fines or forfeitures to fund police training in addition to the state General Fund support. In a 2008 survey, 13 of the responding states collected over half of their police academy budgets from court costs or similar funding streams, whereas Nebraska currently receives only about 15 percent of its funding for the training center from the \$1 LEIF assessment. During the Crime Commission's budget briefing on the Law Enforcement Training Center, the Appropriations Committee voted to draft an amendment that would reinstate the Law Enforcement Improvement Fund fee of \$2. I offer this amendment to LB333, as it is a bill that contains increases in various court fees. I ask that the committee consider this amendment when working on the committee amendments to LB333. And even though I'm in the neutral position, I think if you would adopt this amendment to LB333, you could get some proponents from the Appropriations Committee. If you have any questions, I will try to answer them at this time. [LB333]

SENATOR LATHROP: Senator Ashford, do you want to say something? [LB333]

SENATOR ASHFORD: Oh, I just wonder what that meant, that last...? I understand

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what it means. I do have one just for my edification. Does the commission administer those funds for or on behalf of the center, is that how that works? The money goes to the Law Enforcement...or it goes to the Crime Commission and then it's... [LB333]

SENATOR HEIDEMANN: Then it goes in support of the training center out at Grand Island. [LB333]

SENATOR ASHFORD: So it's a separate line in the Crime Commission's budget? [LB333]

SENATOR HEIDEMANN: I'd say so...I think so, yes. [LB333]

SENATOR ASHFORD: Yeah. Okay. [LB333]

SENATOR HEIDEMANN: We're (inaudible) if I might make a brief comment. We're in tough budgeting times, tough economy. We are trying to do things to affect the bottom line. Right now, we're spending \$290,000 more than what we was. If we could reinstate this--and it had been \$2--if we reinstate it back to \$2, we will save the General Fund budget \$290,000, and that's what the Appropriations Committee is trying to do right now. So thank you very much. [LB333]

SENATOR LATHROP: Thank you, Senator. I should have asked, does anybody have any additional questions? None. Thank you. Anyone else here in a neutral capacity? Senator Ashford, do you wish to close. [LB333]

SENATOR ASHFORD: I waive closing. [LB333]

SENATOR LATHROP: All right. That will close our hearing on LB333. Now we're on to LB344. [LB333]

STACEY TROUT: (Exhibit 13) Chairman Ashford and members of the committee, my name is Stacey Trout, spelled T-r-o-u-t. I'm here to introduce LB344 on behalf of Senator Ashford. This was brought to him on behalf of the Supreme Court...by the Supreme Court. And LB344, in a nutshell, transfers administration of the Civil Legal Services Program from the State Court Administrator to the Commission on Public Advocacy. There's no fiscal impact, since the bill merely moves the administration of the program to a different body. This bill would centralize all grant proposal guidelines and reviews to the Commission on Public Advocacy. And this is a program that provides grants to civil legal services providers for the delivery of free services to low-income persons. Thank you. [LB344]

SENATOR LATHROP: She doesn't take questions, does she? [LB344]

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SENATOR ASHFORD: She can. [LB344]

SENATOR LATHROP: Any proponents of LB344? Janice. [LB344]

JANICE WALKER: Senator Lathrop and members of the committee, my name is Janice Walker. I'm the State Court Administrator and I'm here again, today, to talk about a court fee. However, this one is very simple and the introducer did a good job of explaining. This simply would move the administration of \$1 of the fees that we collect from the Court Administrator's Office to the Commission on Public Advocacy. If you look at the information you received from the Chief Justice, we collect \$5.25 on every court filing. That goes to the commission and they have a grant process to distribute those funds. For whatever reason, when this civil legal services fee was adopted, it was put into...the administration of that \$1 was put into the Court Administrator's Office. We had really no mechanism for taking grant applications and administering grants. We created one. But Mr. Mowbray is here to testify about the process that his office uses, and he has graciously agreed that he would be willing to accept this additional duty from the courts, and it would simply be for ease of administration. [LB344]

SENATOR LATHROP: Very good. Senator Rogert. [LB344]

SENATOR ROGERT: So currently, Janice, you just write them a check basically. You get the money and you transfer it over to them? We're just taking a step out of there? [LB344]

JANICE WALKER: Well, no. I wish it were that simple. We have created a cash fund in our office, and the statute, as written, says that we must take grant applications for this \$1 fee. So we have to go through the whole process of announcing the grant, taking applications. There's only one entity that can be given the money, and that's Legal Aid and that won't change. So if it were just a matter of the money came into my office and we wrote the check out, that would be much easier, but we have to review their quarterly reports...and so it's a little more complex than that. [LB344]

SENATOR ROGERT: I should know. Can you remind me about how much money that is yearly? [LB344]

JANICE WALKER: For a dollar, for every...well, I can't tell you on this one because it is not on every case. I think we have been bringing in about \$150,000, because it's only on certain filings. If for every \$1 that's on every court filing, we bring in close to \$400,000 a year. [LB344]

SENATOR ROGERT: Thanks, Janice. [LB344]

JANICE WALKER: Yes. [LB344]

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SENATOR ASHFORD: And this is 5.5 cents or 5.5... [LB344]

JANICE WALKER: No. The \$5.25, we're not doing anything with that. This is an additional \$1 on certain filings. [LB344]

SENATOR LATHROP: I do have a question for you, and maybe because we're here--and it might more accurately be on LB333--but when there's a criminal case we file a felony against somebody who burglarizes a house in Douglas County, and the filing fee is whatever it is. Who pays that? Does Douglas County pay that? Do they have to pay a filing fee every time they do a criminal case or do we file those for free? [LB344]

JANICE WALKER: Two different answers. In the district court those fees are paid by the prosecuting entity up-front, either the city or the county. In the case of a felony it's going to be the county most all of the time. In the county court, those fees are not collected until the case is completed. If the defendant is convicted, the costs are assessed to the defendant. If they are unable to pay, eventually we claim that back again to the prosecuting entity: county or city. [LB344]

SENATOR LATHROP: So as we raise the fee for filing in the district court, we're essentially charging the counties more for and collecting more money from the counties. They are a big... [LB344]

JANICE WALKER: In some... [LB344]

SENATOR LATHROP: They would be a big client of the district court, if you will. [LB344]

JANICE WALKER: They would be a big client of the district court, yes. [LB344]

SENATOR LATHROP: Okay. Just a thought that occurred to me while you were testifying. [LB344]

JANICE WALKER: Yes. [LB344]

SENATOR LATHROP: Any other questions? Seeing none, thank you. [LB344]

JANICE WALKER: Thank you all for listening to us today. [LB344]

JIM MOWBRAY: Senator Ashford, members of the committee, my name is Jim Mowbray, M-o-w-b-r-a-y. I'm chief counsel for the Nebraska Commission on Public Advocacy. Threatening short of disbarment, I'm here supporting this bill, but I did tell

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Janice that we would be able to take the paperwork away from the Court Administrator's Office. I can give you the history of this. When the TIF money that Senator Heidemann was talking about that was sunset, I believe it was two years ago, and in an effort to keep \$1 for the training center, with Senator Chambers, I believe, and Senator Flood made a deal that \$1 would go to this new fund. And why it was put in the Court Administrator's Office I'm not sure, but anyway that's where the \$1 initially came from. So the \$5.25, it's been there, not all along but since 2005. I think it went up from \$3 to \$5.25. That money is what we have been distributing out, not only to Legal Aid of Nebraska but to other grant recipients. And we believe this year are administering about \$2.4 million, so it does go into a cash fund into our agency, and then that money is all transferred out to the different grant recipients throughout the year. So it's a dollar-for-dollar pass-through, basically. Currently, I believe Legal Aid of Nebraska gets about 60 percent, and they do apply for a grant every year. And so all we're doing is just simply asking them to fill out a separate grant application under this particular process that was created, and administrate that rather than having the Court Administrator's Office bother with it. And to me it's revenue neutral and expense neutral and it won't cost us any more to do that. [LB344]

SENATOR LATHROP: Very good. Thanks, Jim. Any questions? Senator Council. [LB344]

SENATOR COUNCIL: Just a quick question. Thanks, Jim, for testifying. But the money that's collected under this bill, the additional, there are other entities other than Legal Aid that would be eligible for... [LB344]

JIM MOWBRAY: No, not under... [LB344]

SENATOR COUNCIL: Not under the civil legal services program? [LB344]

JIM MOWBRAY: That's correct. This is a separate program that was created kind of at the last minute on the floor, and the way that the guidelines are drafted, even though it's a whole grant process that everyone would go through, it identifies eligible recipients of the grant. And one of the requirements is they have to receive money from the Legal Services Corporation. So only Legal Aid of Nebraska receives that money, and so they are the only ones that would qualify. So it's kind of a fiction that we go through this process of having them...you know, notifying them and having grants, but that's, anyway, the way the statute is written. [LB344]

SENATOR COUNCIL: But the fund that receives the \$5.25... [LB344]

JIM MOWBRAY: The Legal Aid Services Fund. [LB344]

SENATOR COUNCIL: Legal Aid Services Fund. That would be open to, like to the

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Creighton Legal Clinic and... [LB344]

JIM MOWBRAY: Correct. [LB344]

SENATOR COUNCIL: Okay. [LB344]

JIM MOWBRAY: And that is. And that's where the majority of that money, as I say...even though Legal Aid gets probably 60 percent of that, but obviously they're the largest player, but...so all we would be doing is simply passing through the \$280,000. That would all be going directly to Legal Aid of Nebraska. [LB344]

SENATOR COUNCIL: Okay. Now as a new kid on the block, who appoints members to your commission? [LB344]

JIM MOWBRAY: The commission is made up of all attorneys, and they are appointed by the Governor but their names are submitted to the Governor by the executive council of the Nebraska State Bar Association. The attorneys that make up the commissioners are all experienced. They all have to have experience in both criminal and civil, as well as pro bono-type work, so. And normally we have 1-2 usually past presidents of the Bar Association are on the commission: Dave Stickman with the Federal Public Defenders is; Ed Warin. It's...Woody Bradford. That's who makes up some of the commissioners. [LB344]

SENATOR LATHROP: I think that's it. Thanks, Jim. [LB344]

JIM MOWBRAY: Thank you. [LB344]

SENATOR LATHROP: Any other proponents? Anybody here in opposition or in a neutral capacity? Seeing none... [LB344]

SENATOR ASHFORD: I'll waive. [LB344]

SENATOR LATHROP: ...Senator Ashford waives close. That'll complete our hearing on LB344 and our hearings for the day. [LB344]

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Disposition of Bills:

LB669 - Placed on General File.
LB332 - Held in committee.
LB333 - Held in committee.
LB344 - Held in committee.

Chairperson

Committee Clerk